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Review of the efficiency of the administrative and financial functioning of the United Nations

Report on the activities of the Office of Internal Oversight Services

Information requested in paragraph 17 of General Assembly resolution 62/247

Information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the information requested in paragraph 17 of General Assembly resolution 62/247 (A/63/369) and on information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission (A/63/331). During its consideration of the reports, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. The Advisory Committee notes that the report of the Secretary-General on information requested in paragraph 17 of General Assembly resolution 62/247 (A/63/369) was prepared by the Secretary-General in cooperation with the Office of Internal Oversight Services (OIOS). The report provides information on the status of implementation of General Assembly resolution 59/287, including information on training, reporting of allegations of misconduct, managerial action in cases of misconduct, the mechanism to protect staff reporting misconduct and the resolution of disputed findings (paras. 3-17). The report also provides information on all

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administrative enquiries and investigations carried out by OIOS and other internal entities of the Organization (category I and category II cases), their legislative mandates and role, the number and types of cases handled, related resources, reporting mechanisms, the standards and guidelines involved and related training (paras. 18-22) including the status of work to establish a training capacity for programme managers to handle category II cases of misconduct and assessment of such work (paras. 23-26). **The Committee recommends that the General Assembly take note of the information provided in the report of the Secretary-General.**

3. The report of the Secretary-General on information-sharing practices (A/63/331) was submitted pursuant to paragraph 19 of General Assembly resolution 62/247, in which the Assembly requested the Secretary-General to submit a report on the practices relating to the sharing of information between the Organization and law enforcement authorities of Member States, as well as to referrals to such authorities of possible criminal cases related to United Nations staff, United Nations officials and experts on mission, taking into account Assembly resolution 62/63 and other relevant legal instruments. The Advisory Committee notes that another report on criminal accountability of United Nations officials and experts on mission (A/63/260 and Add.1), addressing similar issues, which has been prepared by the Secretary-General in response to paragraph 10 of Assembly resolution 62/63, will be considered by the Sixth Committee during the sixty-third session of the Assembly.

4. As indicated in the report of the Secretary-General on information-sharing (A/63/331, paras. 2 and 3), section 21 of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946, constitutes the legal basis for the Organization's cooperation with law enforcement authorities of Member States. In addition, United Nations officials, in accordance with the Staff Regulations and Rules of the United Nations, and experts on mission, pursuant to the regulations governing the status, basic rights and duties of officials other than Secretariat officials, are required to comply with local laws and honour their private legal obligations. United Nations peacekeeping operations and their members are also bound to respect all local laws and regulations and their special representatives/commanders should take all appropriate measures to ensure the observance of those obligations, as provided in the model status-of-forces agreement for peacekeeping operations.

5. The sources of privileges and immunities of the United Nations, its officials and experts on mission are described in the report of the Secretary-General (A/63/331, paras. 4-10). In this connection, the Advisory Committee notes that "United Nations officials" include all staff members of the United Nations (excepting those recruited locally and assigned to hourly rates), as well as United Nations Volunteers when provided in the status-of-forces agreement and standard basic assistance agreements of the United Nations Development Programme (UNDP). The "experts on mission" include persons engaged on a consultant contract or designated by United Nations organs to carry out missions or functions for the Organization and, in the context of peacekeeping operations or peace support operations, military observers, military liaison officers, military advisers, arms monitors, members of formed police units, seconded individual United Nations police and seconded corrections officers, as provided in the relevant status-of-forces or status-of-mission arrangements.

6. The Secretary-General refers to the practices relating to information-sharing and referrals to national law enforcement officials in section IV of his report. Two principal situations are described. The first relates to situations in which the Organization, using its own investigative processes, establishes credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission and such allegations or evidence are brought to the attention of the Member State having jurisdiction over the alleged conduct. Given the legal issues involved, including those related to the privileges and immunities of the United Nations under the General Convention, such cases are reviewed by the Office of Legal Affairs before a final determination is made on any referral (A/63/331, paras. 12-14).

7. The second scenario relates to situations in which the Organization is approached by a Member State for access to information or material and/or witnesses in the context of an external investigation by law enforcement authorities and/or criminal proceedings being conducted by a Member State (ibid, paras. 15-18). In cases where law enforcement authorities of Member States require access to information or material held by the United Nations or to United Nations officials or experts on mission, the law enforcement authorities request such access in writing. As indicated in paragraph 18 of the report, United Nations officials and experts on mission are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Once a determination is made that it is in the interest of the Organization to cooperate with law enforcement authorities, either the documentary information or material or the officials or experts are made available on a voluntary basis, without prejudice to the privileges and immunities of the United Nations and those accorded to the official or experts concerned. The nature and extent of the cooperation depends on the opinion of the Secretary-General of the United Nations interest at stake in the matter.

8. If the law enforcement authorities of a Member State require formal testimony or wish to file criminal proceedings against a United Nations official or expert on mission in connection with a matter arising in the context of the official duties of that official or expert, such authorities must make a written request to the Organization, generally through their permanent missions to the United Nations, for the waiver of immunities of the individual concerned. Information on requests by law enforcement authorities for waivers of immunity for the purposes of formal testimony and/or formal proceedings involving a United Nations official or expert on mission is provided in paragraphs 19 to 25 of the report (A/63/331). As indicated therein, according to the General Convention, the Secretary-General has "the right and duty to waive immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations" (ibid, para. 20). The decision whether to waive immunity in any particular case is the Secretary-General's exclusive authority.

9. The Advisory Committee was informed that the Secretary-General strives to establish as much consistency as possible in handling criminal cases within the United Nations system and seeks to uphold respect for the law by United Nations personnel and their accountability for breaches, as well as the protection of the privileges and immunities essential for the Organization's independence in the fulfilment of its purposes. The Committee requested information containing data on the waiver of immunities of United Nations and experts on mission from 1 January

2004 to the present. **This information should be provided directly to the General Assembly.**

10. **The Advisory Committee is of the opinion that the information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission, are extremely important issues that go to the heart of the independence of the international civil service and the ability of other officials of the United Nations to carry out their duties effectively, including accountability for personal conduct. The Committee notes that the issues dealt with in the Secretary-General's report (A/63/331) have administrative and far-reaching legal implications, affecting United Nations officials in duty stations all over the world. The procedures for such cooperation with host countries, in particular in situations involving requests for waivers of immunity, must be consistent and transparent.**

11. **The Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General on information-sharing practices (A/63/331). In addition, the Assembly may wish to consider whether the report should also be considered by the Sixth Committee, together with the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission (A/63/260 and Add.1) (see para. 3 above).**